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22 UNITED STATES OF AMERICA

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24 UNITED STATES DISTRICT COURT
25
26 FOR THE CENTRAL DISTRICT OF CALIFORNIA

27 IN THE MATTER OF THE SEARCH OF:
28 A BLACK ZTE CELLULAR PHONE,
16 SEIZED ON MAY 24, 2018 FROM
17 KELLY DESHANNON

18 No. 2:18-MJ-02369

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GOVERNMENT'S EX PARTE APPLICATION
FOR SECOND EXTENSION OF TIME
WITHIN WHICH TO RETAIN AND SEARCH
DIGITAL DEVICES; DECLARATION OF
MAX B. SHINER

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31 The United States of America, by and through its counsel of
32 record, Assistant United States Attorney Max B. Shiner, hereby
33 applies for an order extending by 180 days the time within which the
34 government may retain and continue to attempt to search encrypted
35 digital devices and data, seized pursuant to a federal search
36 warrant.

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This application is based on the attached declaration of Max B. Shiner and the files and records of this case, including the underlying search warrant and affidavit in support thereof, and the previously filed application for extension.

Dated: June 28, 2019

Respectfully submitted,

NICOLA T. HANNA
United States Attorney

BRANDON D. FOX
Assistant United States Attorney
Chief, Criminal Division

/s/
MAX B. SHINER
Assistant United States Attorney

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DECLARATION OF MAX B. SHINER

I, Max B. Shiner, hereby declare and state:

1. I am an Assistant United States Attorney assigned to this investigation for United States Attorney's Office for the Central District of California.

1. This declaration is made in support of a request for an order permitting the government to retain and search the following digital devices and data, seized pursuant to a previously authorized search warrant, which are encrypted or which contain encrypted files:

a. A black ZTE cellular phone, seized from KELLY DESHANNON on May 24, 2018 (the "SUBJECT DIGITAL DEVICE").

2. On September 5, 2018, Special Agent Minh D. Tran of the Federal Bureau of Investigation ("FBI") obtained a federal search warrant issued by the Honorable Paul L. Abrams, United States Magistrate Judge ("the warrant"), authorizing the search of the SUBJECT DIGITAL DEVICE, that had been seized from the possession of KELLY DESHANNON at the time of her arrest on May 24, 2018.

3. The warrant, which is incorporated herein by reference, authorized the search of the SUBJECT DIGITAL DEVICE and provided for its retention by law enforcement for a period of 120 days to allow the government to search such devices for evidence of violations of 21 U.S.C. § 846 (conspiracy to distribute controlled substances) and 18 U.S.C. § 1962(d) (racketeering conspiracy).

4. On December 26, 2018, the government applied for and received an order extending by 180 days the deadline by which the government must complete the review of the SUBJECT DIGITAL DEVICE.

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1 5. This is the second request for an extension. The current
2 deadline by which the government must complete its review of the
3 SUBJECT DIGITAL DEVICE is July 2, 2019.

4 6. Based on information provided to me by FBI agents with
5 respect to the SUBJECT DIGITAL DEVICE, I learned the following:

6 a. The FBI brought the SUBJECT DIGITAL DEVICE to the
7 Orange County Regional Computer Forensics Laboratory ("OCRCFL") on or
8 about September 7, 2018, in order to unlock or decrypt this passcode-
9 protected device. The agents were unable to unlock the device.
10 After unsuccessfully attempting to unlock the device, the agents then
11 spoke to technically trained personnel assigned to the OCRCFL. These
12 technically trained personnel stated that they would not be able to
13 unlock or decrypt the device based on the make and model of the
14 cellular phone. The technically trained personnel stated that a
15 request could be submitted to the Operational Technology Division
16 ("OTD") for other possible means to unlock the device.

17 b. On or about September 10, 2018, the FBI then contacted
18 the OTD, a laboratory located in Quantico, Virginia. OTD advised
19 that they did not currently have a method or tool that would be able
20 to unlock or decrypt the device.

21 c. On or about September 27, 2018, the FBI provided the
22 SUBJECT DIGITAL DEVICE to a third party with expertise in unlocking
23 and decryption of electronic devices, and who, at the time, believed
24 they possessed the capability to unlock such a phone. To date, the
25 third party expert has not been able to unlock the SUBJECT DIGITAL
26 DEVICE.

27 d. The FBI has learned that the SUBJECT DIGITAL DEVICE
28 has two levels of security requiring user input of a password or PIN

1 in order to unlock the encrypted device. At this time the FBI and
2 the third party assisting in the effort to decrypt have not been able
3 to decrypt the device using methods available to them.

4 7. Although investigators cannot currently bypass the
5 encryption on the devices/files described above, I know that new
6 methods for bypassing encryption and for decrypting files and devices
7 are constantly being developed. In addition, I know that it is not
8 uncommon for passwords to be discovered or learned as an
9 investigation continues, for example, when witnesses cooperate, when
10 additional locations are searched, or during ongoing review of seized
11 electronic data. Therefore, I seek permission for the government to
12 retain the devices/data described above, and to continue to attempt
13 to access them, in the event that such methods or information are
14 developed or discovered and the devices/data can be unlocked or
15 otherwise accessed.

16 8. I believe the SUBJECT DIGITAL DEVICE is likely to contain,
17 or to be, evidence, fruits, or instrumentalities of the Subject
18 Offenses for the reasons stated in the affidavit in support of the
19 underlying warrant in this matter. Specifically, based on
20 conversations with Special Agents, I am aware that the SUBJECT
21 DIGITAL DEVICE was found in the vehicle in which DESHANNON was
22 located when she was detained and arrested, and was found on the seat
23 where DESHANNON was sitting. During a search of the vehicle, the
24 SUBJECT DIGITAL DEVICE displayed a number of incoming messages from
25 different contacts indicating that the user of the SUBJECT DIGITAL
26 DEVICE was engaged in the sale of controlled substances (as described
27 in the affidavit in support of the search warrant in paragraphs 11
28 and 14).

1 2. Because there remains probable cause to believe that the
2 SUBJECT DIGITAL DEVICE contains evidence, fruits, or
3 instrumentalities of the offenses described in the underlying
4 warrant, the government seeks to retain the devices identified in
5 this application for a further period of 180 days past the end of the
6 currently authorized search period, in order to continue to attempt
7 to bypass the decryption and search the devices/files. During this
8 period, the government may continue to attempt to search the devices
9 if new technology is obtained or if potential passwords for the
10 devices or files are located during the investigation.

11 3. If the government continues to be unable to access the
12 devices/files for a period of 90 days, it will file a status report
13 to the court, stating that it has not been able to access the
14 devices/files. If the government is able to access the devices or
15 files, it will promptly file a report so notifying the court with the
16 date(s) of access and will follow the search protocols set forth in
17 the original warrant.

18 I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct.

20 DATED: June 28, 2019

/s/ Max B. Shiner
MAX B. SHINER